risk of loss was on the maker of the deed, it is a mortgage; if it is on the payee, it is a conditional sale. *Schneider* v. *Daniel* (Ind. 1921) 131 N. E. 816.

The primary distinction between a chattel mortgage and a conditional sale is that technically the former is a reservation of a lien to secure an indebtedness. See *Elliott* v. *Conner* (1912) 63 Florida 408, 412, 58 So. 241. The latter on the other hand is an agreement to transfer title upon the performance of a condition by the vendee, generally the payment of the purchase price. *Southern Hardware & Supply Co.* v. *Clark* (C. C. A. 1912) 201 Fed. 1. The character of the transaction depends on which of these results the parties intend. *In re Craig Lumber Co.* (C. C. A. 1921) 269 Fed. 755. There are several rules for ascertaining this intent. For instance, a grossly inadequate consideration is an indication of a chattel mortgage. See *Elliott* v. *Conner, supra,* 412. The absence of a prior debt indicates a conditional sale. *Stollenwerck* v. *Marks & Gayle* (1914) 188 Ala. 587, 65 So. 1024. The intent of the parties is to be taken from the entire transaction. *Keane* v. *Kibble* (1915) 28 Idaho 274, 154 Pac. 972. This intention is not determined by what the parties label the transaction. *Walker* v. *Wilmore* (Tex. 1919) 212 S. W. 655. The court in the instant case applied these rules correctly, but added another rule; namely, that if the risk of loss is on the transferor it is a conditional sale. This is unsound, as in the instant jurisdiction, as well as in others, the risk of loss in a conditional sale is on the vendee. See *Quality Clothes Shop* v. *Keeney* (1915) 57 Ind. App. 500, 506, 106 N. E. 541; (1907) 7 COLUMBIA LAW REV. 141; Uniform Conditional Sales Act § 27. This error, however, did not lead the court to an unsound result.

SALES—RESCISSION FOR VARIANCE FROM DESCRIPTION.—The plaintiff seller contracted to ship tins of canned fruit, packed thirty tins to a case. The defendant buyer rejected the shipment because about half were packed twenty-four tins to a case. A referee found that the market value was unaffected by the packing. In an action on the contract, *held,* for the defendant. *Moore & Co., Ltd.* v. *Landauer & Co.* (1921) 125 L. T. R. (N. S.) 372.

At common law, if goods sold by description varied from it, they might be rejected. *Nichol* v. *Godts* (1854) 10 Exch. 191. But a variance so slight as to be negligible was disregarded by the courts. See *Naftzger* v. *Henneman* (1919) 94 Ore. 109, 118, 185 Pac. 233. If it was claimed that the goods were not of the type described, the question was whether they were salable as goods of that type. *Wieler* v. *Schilizzi* (1856) 17 C. B. 619; *Gossler* v. *Eagle Sugar Refining Co.* (1869) 103 Mass. 331. If the method of packing or the time of shipment was the issue, the courts in some cases considered both the effect on the value of the goods and the terms of the contract. *Makin* v. *London Rice Mill Co.* (1869) 20 L. T. R. (N. S.) 705; see *Alexander* v. *Vanderzee* (1872) L. R. 7 C. P. 530, 533. Subsequently, a variance entitled the buyer to rescind regardless of the pecuniary effect of the variance. *Bowes* v. *Shand* (1877) 36 L. T. R. (N. S.) 857. This was not changed by the Sale of Goods Act. (1893) 56 & 57 Vict., c. 71, §§ 13, 30(3); see *Manbre Saccharine Co., Ltd.* v. *Corn Products Co., Ltd.* (1918) 120 L. T. R. (N. S.) 113, 116. The instant case, therefore, followed the authorities. It would probably be followed in the United States. *Cf. Filley* v. *Pope* (1885) 115 U. S. 213, 6 Sup. Ct. 19; Uniform Sales Act § 44 (3). In view of statutory regulation, the decision is sound. It has the merit of enforcing the contract as made; it is certain and of easy application; the seller is not oppressed since he need not warrant the impossible. But in analogous cases courts are tending to permit recovery upon substantial performance of an express condition precedent, allowing a counterclaim for the actual damages suffered. *Cf. Jacob & Youngs* v. *Kent* (1921) 230 N. Y. 239, 129 N. E. 889; *Dakin & Co.* v. *Lee* [1916] 1 K. B. 566; see (1921) 21 COLUMBIA LAW REV. 582.